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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2020 / 2021 SESSION

UCP4612 – CRIMINAL PROCEDURE I

(All Sections / Groups)

28 OCTOBER 2020

Reading Time: 9.00 a.m. – 9.15 a.m.
(15 Minutes)

Answering Time: 9.15 a.m. – 12.15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes only in their question paper. Students then have the remaining **three hours** in which to answer the questions.
2. This question paper consists of 5 pages with 5 questions only.
3. Attempt **ALL** questions in **PART A** and any **ONE** question in **PART B**. The distribution of the marks for each question is given.
4. Students are only allowed to bring in **CLEAN AND ORIGINAL COPY** of the following statutes into the exam venue:
 - i. Criminal Procedure Code; and
 - ii. Penal Code“Clean” is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.
5. Write all your answers in the Answer Booklet provided.

PART A: Attempt ALL questions.**QUESTION 1****Answer all parts of this question.**

- (a) Section 128 of the Criminal Procedure Code provides the requisite condition for a Magistrate to take cognizance of an offence.

Discuss the scope of this section.

(5 marks)

- (b) Elam the 1st accused and Emang, the 2nd accused were jointly charged with the offence of having a common intention of trafficking in dangerous drugs. The trafficking charge against both of them reads as follows:

"That you, on the 21st April 2019 at about 9.00 pm, at No. 55, second floor, Medan Sepadu, JalanAbangGalau, in the District of Bintulu, in the State of Sarawak, in furtherance of common intention of you all, did traffic in dangerous drugs, to wit 315.29grammes of Methamphetamine, thereby you have committed an offence under Section 39B(1)(a) of the Dangerous Drugs Act 1952 and punishable under Section39B(2) of the same Act and read together with Section 34 of the Penal Code."

Elam the 1st accused was found also with possession of 30.59 grammes Methamphetamine in the back right pocket of his pants whereas Emang the 2nd accused was found with 40.26 grammes Methamphetamine in his jacket front pocket. Both the accused persons were also separately charged but tried in the same court under s. 12(2) of the Act as follows:-

For the 1st accused

"That you, on the 21st April 2019 at about 9.00 pm, at No. 55, second floor, Medan Sepadu, JalanAbangGalau, in the district of Bintulu, in the state of Sarawak, had in your possession dangerous drugs, to wit 30.59 grammes Methamphetamine, thereby you have committed an offence under s. 12(2) of the Dangerous Drugs Act 1952 and punishable under s. 39A(2) of the same Act."

For the 2nd accused

"That you, on the 21st April 2019 at about 9.00 pm, at No. 55, second floor, Medan Sepadu, JalanAbangGalau, in the district of Bintulu, in the state of Sarawak, had in your possession dangerous drugs, to wit 40.26 grammes Methamphetamine, thereby you have committed an offence under s. 12(2) of the Dangerous Drugs Act 1952 and punishable under s. 39A(2) of the same Act."

Continued...

The Prosecution called a total of 10 witnesses who were related to all the charges above.

With reference to decided case law and statutory provisions answer the issues below;

(i) Explain the purpose of the charge and the basic requirement in framing a charge?

(13 marks)

(ii) Analyse whether the High Court Judge was correct to jointly try the two (2) accused for the three (3) offences mentioned above.

(7 marks)

(Total: 25 Marks)

QUESTION 2

Answer all parts of this question.

These were two separate transfer applications filed by the Prosecution for an order that each of the cases against the two accused persons be transferred to and heard before the High Court.

The first Respondent a public figure and an elected Member of Parliament was charged at the Sessions Court with three (3) charges under s. 16(a)(A) of the Malaysian Anti-Corruption Commission Act 2009 ('MACC Act') involving a total amount of RM5.2 million and with nine (9) charges under s. 4(1)(b) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('AMLATFPUAA'), which concerned the receipt of about RM139.4 million.

On the same day, the second Respondent, who was the older brother of the first Respondent, was at the same Sessions Court preferred with two (2) abetment charges under s. 28(1)(c) of the MACC Act, read together with ss. 16(a)(A) and 24(1) of the same Act, involving the amount of RM4 million.

On the same day, the Sessions Court allowed the application of the Prosecution for the cases to be jointly tried. The Defence Counsel objected to this application on grounds that this would prejudice the accused.

Continued...

Subsequently, the Prosecution filed these two applications by way of notice of motion against the first and second Respondents respectively for the transfer of these cases from the Sessions Court to the High Court on ground these cases involved 12 charges against the first Respondent alone, concerning 12 Government projects, a number of directors from numerous companies, voluminous documents and complicated facts to tackle the evidence presented for 12 charges faced by the 2 Respondent.

With decided cases and statutory provisions, ascertain the correct procedures to transfer the case from the Session Court to the High Court by the Prosecution supported with the grounds to transfer this case based on the given facts above.

(Total: 25 Marks)

QUESTION 3

Answer all parts of this question.

- (a) “ *If a Public Prosecutor discontinues the proceedings, it is appropriate to grant a discharge amounting to an acquittal and not a discharge not amounting to an acquittal.* ”

[Discharges not Amounting to an Acquittal: A Re- Appraisal: K. Abdul Rasheed v. Public Prosecutor and Ah Chak Arnold v. Public Prosecutor; Stanley Yeo Meng Heong; *Malaya Law Review*; Vol. 27, No. 1 (July 1985), pp. 174-189]

Discuss the quotation in light with the powers of a Public Prosecutor.

(10 marks)

- (b) The DPP then submitted a notice on the appointment of Datuk Thaddeus (a retired lawyer) to be the Deputy Public Prosecutor to conduct this criminal breach of trust trial in the High Court by the Attorney General of Malaysia.

With reference to the development of the law on Criminal Procedure, ascertain whether the Attorney General of Malaysia can appoint a retired lawyer to be a Deputy Public Prosecutor.

(10 marks)

- (c) Compare between summons and warrant under the Criminal Procedure Code.
(5 marks)

(Total: 25 Marks)

Continued...

PART B:

Instruction: Attempt **ONE** question **only**.

Instruction: Attempt Question 4A **OR** 4B based on the following facts.

On 4 February 2015, at 3.30 a.m., Jiraiya made a phone call to Kempas Police Station and reported a murder case involving his friend, Neiji. Later, on the same day, at 7.00 a.m., he lodged a police report - Kempas Report 211/19 as follow:

At about 3 a.m., 4 February 2015, while sleeping in my house at Kg. Setinggalan, Kempas, Melaka I heard Neji who slept beside my room crying out for help. He cried that three unknown persons were hitting him on the head and ran out from his room unsteadily. I then immediately call the police. During the incident, a m/cycle no. MCM 7223 belong to Neiji had been stolen.

Inspector Madara, the Investigating Officer applied for a search warrant in order to search for the murder weapon at the residential home of one of the suspect, Sasori. In the course of conducting the search, Inspector Madara had seized a piece of wood measuring 3 feet long. At the time of the seizure, Sasori was not at home, but his wife was. Inspector Madara brought the seized weapon to the Magistrate's Court for further direction. As no Magistrates were available on that day as all had gone to Kuala Lumpur for an official function, the matter was brought to the attention of Nagato, Registrar of the Magistrate court. Nagato handed over the seized weapon to Inspector Madara who brought it back to Kempas Police Station. Inspector Madara then lodged a police report in relation to the seizure – Kempas Report 255/19.

During the trial of the case in the High Court, Jiraiya testified as follow:

At about 4am on 4 February 2015, while sleeping in the room next to Neiji, I heard Neiji crying out that some person or persons were hitting him on the head. I went out of my room and saw Orochimaru and Sasori take a length of wood and chase Neiji. I am certain that each of them was holding a piece of wood about three feet long. I also saw two other persons but I could not recognize them. There were four persons, two of them I could not recognize.

Continued...

QUESTION 4A

- (a) The Prosecution seeks to tender a certified true copy of Jiraiya's police report (Kempas Report 211/19) as evidence in court. The Defence however objects and insists that the original copy of the report to be produced in court. They further argue that even though the original copy was produced, the report is still inadmissible as it was a 112 statement.

As the Prosecutor conducting this case, examine the above facts and provide your answer to the Defence's contention.

(14 marks)

- (b) Sasori's counsel contended that the search warrant was bad in law for failure to comply with the procedural requirement under the Criminal Procedure Code. He made an application for a revision of the order of the Magistrate in issuing the search warrant.

As the Counsel for Sasori, examine the above facts and provide your argument in support of the application for a revision.

(11 marks)

(Total: 25 marks)

OR

QUESTION 4B

- (a) The Defence contended that there were discrepancies in Jiraiya's evidence particularly on the contents of his police report (Kempas Report 211/19) where he failed to mention the names of the accused persons. Hence, they requested to impeach Jiraiya's credit using the police report.

As the Magistrate hearing this case, identify the Defence's contention and provide your decision on the Defence's request for impeachment.

(14 marks)

- (b) Sasori had filed a civil suit against ASP Madara and the government of Malaysia for invasion of privacy. One of the ground raised in the statement of claim is that the seizure conducted by ASP Madara was unlawful.

As the Federal Counsel for the government of Malaysia, analyse the legality of the seizure conducted by ASP Madara.

(11 marks)

(Total: 25 marks)

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